

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW G. SILVA,

Plaintiff,

VS.

CHRISTINE GREGOIRE, et al.,

Defendants.

NO. CV-10-5010-CI

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND DENYING
APPLICATION TO PROCEED IN
*FORMA PAUPERIS***

BEFORE THE COURT is Plaintiff's Matthew G. Silva's Objections to the Report and Recommendation to deny his application to proceed *in forma pauperis* (Ct. Rec. 6). Plaintiff does not dispute the Magistrate Judge's finding he had more than three previous lawsuits in federal courts dismissed as "strikes" under 28 U.S.C. § 1915(g). Rather, he seeks and exception to this bar to proceeding *in forma pauperis*, claiming he is presently under "imminent danger."

Contrary to Plaintiff's assertion in his Objection, the complaint failed to make a plausible allegation that Mr. Silva faced "imminent danger of serious physical injury" at the time of filing. He stated he is presently housed at the Washington State Penitentiary (WSP). He identified only two Defendants among the 27 Defendants listed in the caption of the complaint who work at the WSP. He named an infection control nurse, Alan Bailey, as a Defendant, but described no recent events from which the court could

1 plausibly infer Plaintiff is under "imminent danger of serious physical injury."¹

2 Plaintiff admitted his Hepatitis C condition pre-dated his initial incarceration in
3 1999. He did not state when or how Defendants Sinclair and Bailey refused to diagnose
4 or treat his Hepatitis C condition and symptoms, or even that they have the medical
5 training to do so. Plaintiff's allegations were vague and unspecific. He did not state
6 when he asked for assistance from medical providers at the WSP, what kind of treatment
7 he requested, who he asked, or who denied it. Contrary to his assertion, he did not
8 clearly state in his complaint that medical attention has actually been denied by doctors
9 at the WSP.

10 Absent such allegations, and even viewing the *pro se* complaint liberally, the court
11 could not determine that Plaintiff faced an imminent danger. Because of this and the
12 need to ensure that the endangerment "exception [does not] swallow the rule," the court
13 finds Mr. Silva's allegations are insufficient.

14 For the reasons set forth above and in the Report and Recommendation, **IT IS**
15 **ORDERED** the Report and Recommendation (Ct. Rec.) is **ADOPTED in its entirety**
16 and Plaintiff's application to proceed *in forma pauperis* is **DENIED** pursuant to 28

17 Plaintiff's complaint that Defendant Bailey failed to perform a liver biopsy from
18 1999 to 2001 is time-barred. A federal claim accrues when the plaintiff knows or has
19 reason to know of the injury which is the basis of the action. *Bagley v. CMC Real Estate*
20 *Corp.*, 923 F.2d 758, 760 (9th Cir. 1991)(citations and internal quotations omitted). The
21 statute of limitations runs separately from each overt act alleged to have caused injury
22 under 42 U.S.C. § 1983. *Gibson v. United States*, 781 F.2d 1334, 1340 (9th Cir. 1986).
23 Injury and damage in a civil conspiracy action flow from the overt acts, not from the
24 mere continuance of the conspiracy. *Id.* As such, a plaintiff alleging a continuing civil
25 conspiracy may only recover for acts occurring within the relevant statue of limitations
26 period. *Id.*

1 U.S.C. § 1915(g).

2 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
3 Order and forward a copy to Plaintiff. Plaintiff may submit the \$350.00 filing fee within
4 **TWENTY (20) DAYS** of the date of this Order. Failure to do so will be construed as his
5 consent to dismissal of this action. The District Court Executive shall SET A CASE
6 MANAGEMENT DEADLINE ACCORDINGLY.

7 **DATED** this 10th day of March 2010.

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9 *s/Lonny R. Sukko*

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11 LONNY R. SUKO
CHIEF U. S. DISTRICT JUDGE
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